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SUB-COMMISSION ON THE PROMOTION AND
PROTECTION OF HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE 18th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 17 August 1999, at 10 a.m.

Chairman: Mr. HATANO

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GE.99-14938 (E)

The meeting was called to order at 10 a.m.

HUMAN RIGHTS OF INDIGENOUS PEOPLES:

(a) INDIGENOUS PEOPLES AND THEIR RELATIONSHIP TO LAND

(agenda item 7) (continued) (E/CN.4/Sub.2/1999/18, 20 and 24;
E/CN.4/Sub.2/1999/NGO/1 and 16; E/CN.4/Sub.2/AC.4/1999/5)

1. Mrs. DAES, introducing her second progress report on the working paper on indigenous people and their relationship to land (E/CN.4/Sub.2/1999/18), said that comments received from the Governments of Australia, Canada, Denmark and New Zealand and from indigenous peoples' organizations had been duly considered and, in some cases, reflected in the report. As only a small number of comments had been received in the previous 12 months, however, she recommended that the second progress report should be circulated to Governments, indigenous communities and organizations, intergovernmental organizations (IGOs) and non-governmental organizations (NGOs) so that any ensuing comments, information or suggestions could be incorporated into the final working paper to be submitted to the Sub-Commission at its fifty-second session. She stressed, however, that she bore sole responsibility for the contents of the report.

2. The ongoing development of the rights of indigenous peoples to lands, territories and resources provided both States and the peoples concerned with an opportunity to contribute to the progressive development of human rights standards. Legal concepts and indigenous rights were not frozen in time and indigenous communities evolved just like other societies. A widespread contemporary problem was the failure of States to protect indigenous land use, occupancy and ownership by according appropriate legal status and legal rights to the communities concerned. Indeed State authority was used in many cases to extinguish aboriginal title to land and property.

3. The expropriation of indigenous lands and resources for development projects, frequently without the consent of the communities concerned, and the removal and relocation of indigenous peoples were serious and growing problems. Other key issues were: programmes to allot indigenous land to individuals; settlement programmes on indigenous lands; the practice of requiring that indigenous land should be held in trust by the State; the use of indigenous lands as collateral for loans; harmful State management of sacred and cultural sites; failure to protect the environmental integrity of indigenous lands and resources; and denial of the right of indigenous peoples to manage, use and control the development of their lands and resources.

4. The very survival of indigenous peoples was being jeopardized by continuous threats to their lands, territories and resources. Their distinctive and profound relationship with indigenous lands, air, waters, coastal seas, ice, flora and other resources had many social, cultural, spiritual, economic and political dimensions and entailed enormous responsibilities.

5. The most encouraging and productive measures proposed for resolving indigenous land issues were those based on fair and voluntary negotiations

between the States and the communities concerned under the auspices of an international body. In the view of many indigenous peoples, Convention No. 169 of the International Labour Organization (ILO) concerning Indigenous and Tribal Peoples in Independent Countries laid down minimum standards in respect of indigenous land rights. The draft declaration on the rights of indigenous peoples, approved by the Sub-Commission in its resolution 1994/45, also reflected a broad consensus among indigenous peoples. Some States and experts on indigenous land and resource rights.

6. She highlighted a number of the preliminary recommendations contained in her report. States should enact legislation that recognized indigenous peoples' legal protection, rights and status in respect of lands, territories and resources that placed them at least on an equal footing with other members of the population. Such legislation should recognize their traditional practices and law of land tenure and should be developed with the participation and consent of the indigenous peoples concerned. Special measures regarding indigenous land and resources should not, however, deprive indigenous peoples of legal rights in respect of land and resources that other groups and individuals enjoyed.

7. States should formally renounce discriminatory legal doctrines, policies and practices and should consider adopting corrective legislation or policies during the International Decade of the World's Indigenous People. States should also consider establishing and using impartial mechanisms, including international mechanisms, to oversee the resolution of indigenous land and resource claims and the implementation of land agreements. States, the United Nations system and other intergovernmental bodies should take steps to provide training and educational facilities and financial and technical resources to assist indigenous peoples in land rights negotiations.

8. The Commission on Human Rights, the Economic and Social Council and the General Assembly should consider whether the proposed permanent forum for indigenous people could play a constructive role in addressing issues of land and resource rights and environmental protection. The United Nations system and other intergovernmental bodies should ensure that indigenous peoples' cultural diversity, traditions, values and ways of life were protected in the implementation of Agenda 21. The High Commissioner for Human Rights should consider collecting examples of indigenous land agreements to facilitate the promotion of technical cooperation in that field. Indigenous peoples should participate in decision-making and policy-making regarding land, resources and development at the international, regional, national and local levels, inter alia in the context of the Commission on Sustainable Development and the Convention on Biological Diversity.

9. Mr. ALFONSO MARRERO, introducing his final report on treaties, agreements and other constructive arrangements between States and indigenous populations (E/CN.4/Sub.2/1999/20), said that a revised version of the report would be published later in the year. A number of errors and omissions would then be corrected and two annexes reflecting criticism of his position concerning the applicability of the term "indigenous" in Africa and Asia would be appended. That criticism had been expressed in communications from participants in the Working Group on Indigenous Populations. Paragraphs 86, 87 and 88 of the report were new and concerned that issue.

10. The report was the product of 18 years' work and he bore sole responsibility for its contents, conclusions and recommendations. Paragraph 181 had been amended to take account of a comment made by the Government of Denmark on events in Greenland. A correction by the representatives of the indigenous people of Hawaii would be included in the revised version to be published at the end of 1999.

11. Part IV contained the Special Rapporteur's conclusions and recommendations. He agreed with Mrs. Daes in stressing the primacy of the issue of recognition of indigenous peoples' right to their lands and resources. Moreover, indigenous peoples, like all other peoples on Earth, had an inalienable right to self-determination. At the same time, States had a right and duty to defend their territorial integrity. Any conflict that arose between the exercise of those two rights should be resolved by peaceful means, preferably through national conflict-resolution mechanisms, although the establishment of a body with international jurisdiction should not be ruled out. In the vast majority of cases, the relationship between indigenous peoples and non-indigenous sections of society was one of conflict and many indigenous communities and Governments thought that existing mechanisms were incapable of resolving such conflicts.

12. Treaties concluded by non-indigenous settlers and their successors with indigenous peoples remained in force unless both parties decided that they should be terminated. Such instruments could not be unilaterally declared null and void. Peoples who had been given some form of recognition under international law should not be viewed as having acquired a different legal status unless valid reasons were adduced for the change.

13. He recommended the establishment within States having a sizeable indigenous population of a new jurisdiction that would be capable of defusing potential conflicts before they erupted. The jurisdiction should have advisory functions, the capacity to initiate legislation, judicial functions enabling it to adjudicate cases and hand down binding decisions on existing conflicts, and administrative responsibility for logistic aspects of indigenous/non-indigenous relations during a transitional period.

14. He would respond to criticism of his position on the applicability of the term "indigenous" in post-colonial regions of Africa and Asia after the Debate on Agenda item 7 had been completed.

15. Mr. ~~WILLIS~~, speaking as a member of the Working Group on Indigenous Populations, thanked Mrs. Daes and Mr. Alfonso Martínez for responding to criticism of their reports and taking account of the existence in Asia and Africa of indigenous peoples who had been displaced from their lands by colonization and were asserting their rights to those lands. He hoped that the contributions of organizations of indigenous peoples in Asia and Africa would be reflected in future reports and give rise to standards applicable to those peoples.

16. In some parts of the world where pharmaceutical products were not yet available, indigenous peoples were just as healthy as their fellow citizens with access to such products. Their organisms and immune systems tended to

suffer, however, when they came into contact with industrial pharmaceutical products. He called for research with a view to ensuring that indigenous peoples enjoyed legal protection of their physical integrity and the environment in which they lived.

17. Mrs. DAES said that, to her knowledge, there had been no criticism of her report by Asian or African participants in the Working Group on Indigenous Populations.

18. Mr. GUISSÉ said that criticism was perhaps the wrong term. There had merely been requests to extend the scope of the studies to include continents that had been excluded on the grounds that their populations did not include indigenous peoples.

19. Mrs. DAES said that all her reports had been global in scope.

20. Ms. LEVERGER (France Libertés - Fondation Danielle Mitterrand) said that the Mapuche people, who made up 10 per cent of the population of Chile, were threatened with the destruction of their environment and eviction from their lands as a result of the activities of foreign-backed Chilean logging and hydroelectric enterprises. An attempt to defend their way of life had met with government oppression, arrests and torture, and campaigns of terror were being waged against them by paramilitary groups in the pay of the transnational corporations. The Sub-Commission should call upon the Government of Chile to halt the oppression of the Mapuche people and afford them constitutional recognition.

21. In defiance of successive Security Council resolutions, the Moroccan army had occupied much of Western Sahara for more than 20 years. Her organization called upon the international community, and in particular the United Nations Mission for the Referendum in Western Sahara (MINURSO), to spare no effort to ensure that the people of Western Sahara were accorded the right to self-determination.

22. Mr. PHILLIPS (Minority Rights Group) said that a recent report by his organization highlighted the dramatic effects of deforestation on indigenous peoples in Asia. Deforestation was proceeding at an average annual rate of 3.9 per cent and constituted a violent attack on the land and other rights of indigenous forest communities by transnational corporations and so-called "development" programmes. Indigenous communities in peninsular Malaysia were threatened by highway projects, plantation schemes and the aggressive promotion of tourism. Government-sanctioned logging had inflicted massive environmental damage in Thailand. A community in Nepal's Chitwan Valley had seen its livelihood destroyed by bridge and dam construction. In India, up to 30 million people, 40 per cent of them indigenous, had been displaced by mining activities and deforestation. Mangrove forests in the coastal areas of Bangladesh had been cleared for commercial shrimp farming schemes funded by the Asian Development Bank and the World Bank.

23. The blame did not lie solely with Governments. His organization recommended that, as a minimum, international financial institutions, companies and development agencies should adopt clear policies that recognized

indigenous peoples' rights, and ensure their active and informed participation, involving their specific consent, in any development projects that would affect them.

24. Mr. LITTLECHILD (International Organization of Indigenous Resource Development) said it was unfortunate that the Working Group on Indigenous Peoples had had insufficient time to consider all the items on the agenda at its seventeenth session. His organization thus urged the Sub-Commission to request the Commission to extend the Working Group's future sessions to 8 or 10 days, and to consider self-determination, indigenous lands and women's rights as possible future themes therefor.

25. With regard to the International Decade of the World's Indigenous People, he suggested that the Sub-Commission should follow up the proposals submitted by his organization to the Economic and Social Council at its most recent substantive session, and, in particular, the call for a United Nations world conference on indigenous issues to be convened before the end of the International Decade.

26. The final report on treaties, agreements and other constructive arrangements between States and indigenous populations (E/CN.4/Sub.2/1999/20) reflected the view that those instruments were international treaties between nations. The final report required detailed study and analysis by the leaders of the nations in all the treaty territories. Either United Nations seminars or a workshop should be convened for the purpose. Alternatively, it should be included in the agenda of the world conference on indigenous issues. The Sub-Commissioner for Human Rights should call for the early establishment of a permanent forum for indigenous people in her next Annual report to the General Assembly.

27. His organization endorsed paragraphs 116, 124, 125 and 128 of the second progress report on the working paper on indigenous people and their relationship to land (E/CN.4/Sub.2/1999/18); urged the Sub-Commission to refer paragraph 144 thereof to the open-ended inter-sessional ad hoc working group on a permanent forum for indigenous people, for consideration in its final report; and urged Mrs. Easa to take account of the discriminatory treatment of indigenous war veterans of the Four Great Nations of Myanmar in her next report. Lastly, his organization urged that the draft United Nations declaration on the rights of indigenous peoples be adopted without changes or amendments, and supported the call for the appointment of a special rapporteur on the situation of human rights in Mexico.

28. Mr. BHAN (International Institute for Peace) said that the 100,000-strong Pandit indigenous community of Kashmir, a compact ethnic and cultural group that had made a tremendous contribution to Kashmir's development and had always coexisted in harmony with its Muslim brethren, was facing cultural extinction as a result of the rise of religious fundamentalism and terrorism exported by a neighbouring country in furtherance of its political ends. Since the start of the 1990s, some 2,000 Pandits had been murdered, and almost the entire community had taken refuge in migrant camps in other parts of India, fleeing a reign of terror.

29. The forces responsible, which had previously wrought havoc in Afghanistan, were currently poised to strike at the rich cultural diversity of the Central Asian republics. His organization reiterated previous calls for the Sub-Commission to come to the rescue of a hard working and enlightened community whose way of life was threatened with extinction.

30. Mr. GUZEN (Centre Europe-Tiers Monde) said that neo-liberal ideology, posing as a panacea for the planet's problems, encouraged the plundering of indigenous lands and the irreversible destruction of the environment by transnational corporations. Thus, in Colombia, the Embera-Katio people and the fishermen of the Sima River region were threatened by the construction of the Urra I dam, which was nearing completion. Protests, demonstrations and petitions opposing the flooding of the valley had been met by a threat from a paramilitary leader to massacre the entire Embera-Katio people if they refused to leave their ancestral home.

31. Following two civil actions, the Constitutional Court had suspended the project pending proper impact studies, recognition of the elected Embera-Katio leaders by the authorities, and measures to compensate those affected. Nonetheless, there was every reason to fear that the project would go ahead, particularly in the light of the measures taken by Congress and the Government to undermine indigenous rights and give priority to transnational mega-projects.

32. The Sub-Commission must call upon the Government of Colombia to ensure respect for the rights of its indigenous peoples by transnational corporations, the army and paramilitary groups; to compel the Urra Corporation to respect the Constitutional Court ruling; to restore the indigenous population's economic infrastructure; to suspend flooding of the valley until an agreement had been freely signed by those affected; and to investigate crimes committed against the opponents of the scheme.

33. Mr. WILFEE (Consultative Council of Jewish Organizations) said that non-indigenous interests did not necessarily conflict with indigenous ones and autonomous legal arrangements need not pose a threat to legal sovereignty or to the principle of equality before the law. Greater account needed to be taken of the complexities of relations between different communities within States. It was all too easy for parties to become polarized if they adopted a stereotyped, outdated view of one another. Any dialogue worthy of the name implied mutual recognition by the parties, in all the complexity of their current status. Thus, some indigenous representatives had even asserted that there was no need for a fixed definition of "indigenous peoples".

34. Institutions linking indigenous and non-indigenous representatives were of critical importance in promoting open scrutiny of the arrangements agreed upon between them. Without such joint institutions, agreements might quickly fall apart, as had happened in the case of the provisions of the Helsinki Accords. It should be remembered that agreements redressing historical injustice and rectifying continuing discrimination served the common good, provided that relations between indigenous and non-indigenous communities were not seen as a conflict between opposing national identities. Peoples whose

rights were thus protected might be more likely than others to argue that their interests and those of the rest of the national community lay in cooperation.

35. Mr. KU HERRERA (Centre of Economic and Social Studies of the Third World) said that the Sub-Commission should examine the objectivity, impartiality, and ideological and political motives of those who systematically attacked Mexico and its institutions, using the indigenous problem as a pretext.

36. Millions of Mexicans, including most of the indigenous population, live in extreme poverty. Persisting colonial attitudes perpetuated racism and a denial of fundamental rights, and impeded the consolidation of a multi-ethnic multicultural society. Paternalism and ideological, political and religious interference prevented the indigenous populations from exercising their right to self-determination.

37. They had thus united to fight for democratic change, for equality of Mexican citizens before the law, for full participation by indigenous people in national development; for freedom to choose their own social models; for control over their natural resources; for sustainable development, education, culture and freedom from discrimination; for an end to human rights violations, impunity and corruption; and for recognition and protection of their human dignity.

38. However, some indigenous people had mistakenly come to see conflict and violence as the only way to attain their objectives. The conflict in Chiapas was not an indigenous movement; it was essentially a political movement bent on overthrowing the Government. The danger was that indigenous people would be used as pawns in a game in which the only winners would be the powerful and wealthy. The Sub-Commission should call upon the Zapatista National Liberation Army (EZLN) to promote a political solution to the Chiapas conflict by re-entering into negotiations, in which indigenous people would participate, as a means of halting the violence from which they could never stand to benefit.

39. Mr. BARY (Indian Movement "Tupac Katari") said that, five years after the adoption of the Programme of Action for the International Decade of the World's Indigenous People, little or nothing had been done to solve their vital problems. They were still being deprived of their land and resources and were still succumbing to extreme poverty and the steady deterioration in their health and education. It was disappointing to note the selfishness of the rich countries of the North and the indifference of the dominant elites of the South and the incoherence of their policies to solve indigenous problems because there was no political will to do so and the economic and strategic interests of the Western Powers were excessive.

40. International cooperation meant stimulating the production of goods and services for the self-reliance of the indigenous people, and not wasting money and time on courses, workshops and reports. The United Nations Voluntary Fund for Indigenous Populations lacked both the resources and the political will to meet the requests of the communities concerned; it had become a kind of Caritas Internationalis, doling out paltry sums of money for the so-called

Decade projects as aims for the indigenous people. The Sub-Commission should look into the role of the Fund, the criteria for providing subsidies to projects and the transparency and composition of its Board of Trustees, with particular reference to their impartiality and independence.

41. If the Working Group on Indigenous Populations were to disappear as a result of the rationalization of the work of the Sub-Commission and its mechanisms, that would be a severe loss to the indigenous people. That did not mean that there was not a need to reformulate the Working Group's mandate, modify its procedures, broaden the scope of its authority and improve the composition of its membership, by the appointment of indigenous people as alternate members. Moreover, the Sub-Commission should entrust to the Working Group the task of elaborating an international legal framework to protect the cultural and intellectual property of indigenous people.

42. His organization was totally opposed to accepting the invitation by the United Nations Educational, Scientific and Cultural Organization (UNESCO) to hold the next meeting of the Working Group in Paris, because the Government of France had stated that there were no indigenous people in its country and it had, consequently, not recognized the right to self-determination of indigenous peoples.

43. Mr. BAJUMAR (Pax Romana) said that, while the findings in the Special Rapporteurs final report on treaties, agreements and other constructive arrangements between States and indigenous populations (E/CN.4/Sub.2/1999/20) could help redress the historical injustice suffered by some indigenous peoples, his organization was greatly concerned by its failure to analyse treaties concluded between States and the indigenous peoples of Africa and Asia. That gap in the report might lead to the erroneous assumption that there were no indigenous peoples in those continents and the omission should be rectified in a later study.

44. The report did, however, acknowledge the importance of the relationship between indigenous peoples and their land. Transnational corporations, particularly high-risk ones, were more likely to be sited on the land of indigenous peoples, where the economic and political power to reject them were limited. In a number of countries indigenous people were being displaced from their traditional lands and livelihoods by government policy, tourism, mining and logging.

45. His organization welcomed the progress made towards establishing a permanent forum for indigenous people within the United Nations system and, considered that it must be established at the highest possible level with a role in both the prevention and resolution of conflicts between indigenous peoples and States and the monitoring of the human rights of indigenous peoples. It was necessary for the Sub-Commission to study the mechanisms and procedures by which the forum could operate.

46. It was a matter of great concern that the Member States did not seem to attach much importance to the draft United Nations declaration on the rights of indigenous peoples. There was an urgent need for it to be adopted before the end of the International Decade of the World's Indigenous People, and he urged the Sub-Commission to study ways of speeding up the adoption process.

47. Mr. BENGOA said that, in his final report on treaties, agreements and other constructive arrangements between States and indigenous populations (E/CN.4/Sub.2/1999/20), Mr. Alfonso Martínez had made a clear-cut political distinction between indigenous peoples and other groupings which should not be recognized as indigenous by the international community. He had made that distinction because he considered that, in Asia and Africa, there were no generalized situations of "indigeneness". The factor differentiating minorities from indigenous peoples was that of the latter's aboriginal nature. As a result, the concept of "indigenous" was almost exclusive to the Americas, Oceania and a few other places.

48. It was necessary, however, to take into account the indigenous nature of certain peoples in Africa and in other areas where the process of domination was not through immigration or the imposition of a European or "transatlantic" culture. In that connection, the report probably made too little use of the old distinction between indigenous and tribal people. It was not an easy topic to deal with, since it formed a social continuum with no established frontiers and, although it was satisfactory and practical to opt for a political and instrumental kind of differentiation, the basis for discussion was really the anthropological distinction between a nation and an ethnic group.

49. The current report dealt with the national question in terms of colonization processes whereby the collectivity had been dominated as a whole without the elite members of indigenous societies necessarily being destroyed. In his previous reports, Mr. Alfonso Martínez had dealt in detail with various forms of colonialism employed by anglophone and Hispanic countries, and that was probably a more fertile point of departure for an analysis.

50. Mr. Alfonso Martínez had noted that treaties or other international instruments of a contractual nature had been entered into with the very powerful motivation of legitimizing rights which States could use to counter-act opposing claims advanced by other colonial Powers. That was quite a clear and precise definition for North America or Oceania but it did not apply too well to Latin America, where an agreed division of territory between the Spanish and the Portuguese had been sponsored by the Pope.

51. On the question as to whether or not indigenous peoples could be considered as nations in the sense of contemporary international law, a central issue for future discussion of the subject in the international context, Mr. Alfonso Martínez had been unable to find any solid legal argument indicating that they had lost their international legal status as nations/peoples. That was an important conclusion, but not everyone accepted it. He had also established the absolute equality of all peoples on Earth with regard to the inalienable right to self-determination. That was a general principle that should be considered in greater depth and form the subject of future studies.

52. Since indigenous peoples and colonial nations had not in the past been differentiated in international politics, it was necessary to incorporate the concept of ethnogenesis. Ethnicity was an evolving historical process, and a more historicist concept should be adopted to distinguish between peoples and nations. The word "nation" implied a device for a leading role and

self development, while the word "people" affirmed a cultural identity. Such concepts were fundamental when it came to analysing the various ways of exercising the universal right to self-determination of peoples, for some peoples had always been nations and had been colonized as such, while other groups had never had their own State but were seeking, through a process of self-identification, to form political organizations above and beyond a common cultural identity.

53. He personally did not agree with the observation in the report (para. 181) concerning the issue of "self-government" and "autonomy" offered in certain cases as a substitute for the full exercise of ancestral governance rights. In many cases, indigenous people had never had State structures, and it was important to remember that the concepts of "nation" and "nationalism" had appeared in the nineteenth century only. In its discussions, the Sub-Commission would have to examine in greater detail how the principle of self-determination was to be exercised in an increasingly globalized world.

54. The study, which was provocative, polemical, innovative and timely, would undoubtedly stimulate more studies on the subject and he, consequently, congratulated its author.

55. Mr. MEHERI, noting the complementarity between the activities of NGOs and intergovernmental initiatives to assist indigenous people in their efforts to maintain their identity and cultural heritage, said he wished to emphasize UNESCO's efforts to promote their rights through its Associated Schools Project Network and other initiatives to provide education in human rights in general and the rights of indigenous people in particular.

56. Human rights education and the International Decade of the World's Indigenous People would do much to increase public awareness of the rights of indigenous people. He welcomed the provision by the Office of the High Commissioner for Human Rights (OHCHR) of training programmes and fellowships to give indigenous people the opportunity to acquire knowledge of the international human rights conventions as they affected them and to help their organizations and communities to protect and promote their human rights.

57. He fully endorsed the recommendations by Mr. Alfonso Martínez in his final report on treaties, agreements and other constructive arrangements between States and indigenous populations (E/CN.4/Sub.2/1999/20) that three workshops should be convened at the earliest possible date in the framework of the Programme of Action for the International Decade of the World's Indigenous People, namely, on the establishment of an international conflict-resolution mechanism on indigenous issues; on modalities for redressing the effects of the historical process of land dispossession suffered by indigenous peoples; and on the implementation and observance of indigenous treaty bodies; and that the creation of an Internet page be promoted that would be exclusively dedicated to indigenous issues and United Nations activities relating to indigenous interests.

58. Mr. MUÑOZ (International League for the Rights and Liberation of Peoples) said that most surviving natural resources were situated in indigenous territories, such as the primeval forests of Central America, which had been maintained in harmonious coexistence with indigenous communities who

saw the land as the basis of the reproduction of their peoples and their cultures, but were in the course of despoliation by people of Western culture who viewed nature as something over which man held supremacy.

59. The destruction of biodiversity, attended by social and cultural decline, made it imperative to establish a new relationship between indigenous communities and Governments, with full participation of the communities in decision-making. The international instruments already existed to achieve such a partnership but those principles were not always respected in national legislation.

60. The right to self-determination recognized in the draft United Nations declaration on the rights of indigenous peoples should not be regarded as a threat to the territorial integrity of existing national States, and misunderstandings and disagreements on that point needed to be clarified and dispelled by a full discussion with the participation of all the groups concerned.

61. The situation of the Mapuche people in Chile and the various indigenous peoples of Mexico called for special attention by the Sub-Commission. Since it was impossible to resolve in a short time the many problems that had arisen over hundreds of years, it was essential for policies against discrimination to be maintained. Her organization welcomed the constructive report by Mrs. Daes (E/CN.4/Sub.2/1999/18) on the relationship of indigenous peoples to land. The important contribution that they could make to social development deserved wider recognition.

62. Mr. WEISSERANT said that Mrs. Daes' second progress report on her working paper (E/CN.4/Sub.2/1999/18) took account both of the common elements in the struggle of the indigenous communities and the particular needs of indigenous peoples within their local communities. The final report of Mr. Alfonso Martínez on indigenous treaties (E/CN.4/Sub.2/1999/20), which addressed very broad and complex issues, drew distinctions that were not always logical or sustainable. Although the latest version of his report recognized that there were indigenous communities all over the world, it was regrettable that he had tried to characterize some of them as minorities and thus outside the scope of his study. His recommendations were, however, generally sensible and thoughtful and, despite its shortcomings, the study represented a milestone in the process of integrating indigenous treaties and broader theories of international treaty obligations.

63. The draft declaration on the rights of indigenous peoples was a very important reaffirmation of general human rights principles and the progress made towards its adoption was among the many valuable contributions made by the Working Group on Indigenous Populations. Some Governments had, however, noted the presence of several unresolved problems and ambiguities in the draft as it currently stood. While indigenous representatives considered self-determination to be the core concept of the declaration, Governments feared that the use of the terms "self-determination" and "peoples" might be construed as giving indigenous societies the right to secede and control separate territories. In his own view, "indigenous self-determination" should be understood as, in the words of Mrs. Daes, the right "to negotiate and agree

upon their role in the conduct of public affairs". It was of crucial importance to note the implication that indigenous communities could not act in ways which violate established principles of international human rights law. "Indigenous self determination" should not, therefore, be seen as a threat to either national interests or international standards.

64. Some Governments had also raised specific concerns regarding the balance between the right to indigenous self autonomy and the principle of non-discrimination. However, the term "discrimination" in the Draft declaration referred only to adverse forms of discrimination, which might place indigenous peoples or individuals at a disadvantage relative to other groups. The right to participate fully in the political, economic, social and cultural life of a country could be guaranteed only within a national context. Affirmation of the right of indigenous peoples to participate in national affairs, as well as to engage in the life of their communities, might help to temper any conceptual conflicts that might exist between the need to ensure both self-determination and non-discrimination.

65. The notion of collective rights also gave rise to concerns in some countries that saw human rights as primarily embodied in the individual. The rights set forth in the draft declaration were not, however, unlike the fundamental human rights articulated in the International Bill of Human Rights, which included several collective rights, including those to form associations (trade unions), to practise one's religion, and, of course, the rights of minorities. Collective rights did occasionally compete with individual rights and it was of crucial importance to recognize that the emphasis on collective rights did not privilege them over those of the individual, but rather extended those rights to communities as a whole.

66. In discussing the draft declaration, Governments had focused on the relatively less controversial issues in the hope of building a working relationship with the indigenous participants but the latter had unfortunately been unwilling to negotiate on those issues out of fear that compromises might undermine fundamental issues relating to self-determination and land rights. The time seemed to have come for all the negotiators to focus on the major issues so as to overcome the impediments that had arisen.

67. Mr. RIDE congratulated Mrs. Daes and the other members of the Working Group on Indigenous Populations on their work which had, over the years, resulted in substantial changes in the legislation of many countries. The Working Group must continue its activities until the permanent forum was established. As far as the important issue of land rights was concerned, Mrs. Daes' analysis, in the second progress report on her working paper (E/CN.4/Sub.2/1999/18), of the doctrines of dispossession, and her discussion of the concepts of terra nullius and Crown land, were of great practical and theoretical interest. She also discussed a mechanism for negotiation, the question of constitutional reform and framework legislation and explored various initiatives taken by the indigenous peoples themselves. Perhaps some discussion of the role of international financial institutions, including the World Bank, in framing their development programmes might also be included in the final form of the report. He was in general agreement with her recommendations (paras. 132-149).

68. The long-awaited study by Mr. Alfonso Martínez on treaties, agreements and other constructive arrangements had matured over time and changed in scope and content. The final report thereon (E/CN.4/Sub.2/1999/20) was polemical and thought provoking, as its author recognized in expressing his openness to criticism. The absolute dichotomy between indigenous peoples and minorities was not acceptable any more than the restriction of the "indigenous" concept to encounters between European colonizers and non-European peoples.

69. There also seemed to be some elements of contradiction within the report: paragraph 28e affirmed the right of indigenous peoples to self-determination, whereas ethnic groups living inside African and Asian States were excluded from the indigenous category and the right of those States, and indeed their duty, to preserve their "fragile territorial integrity" was proclaimed (para. 88). Since Mr. Alfonso Martínez also expressed the view in paragraph 28e that any contradiction that might emerge between the exercise of the right by indigenous peoples to self-determination and the recognized right and duty of the States in which they lived to protect their territorial integrity should be resolved by peaceful means, it was not at all clear why that principle should not apply to African and Asian situations also.

70. In paragraphs 807 and 808 of the report, a far-reaching proposal was made for a special jurisdiction to handle what amounted to the claim of self-determination for indigenous peoples, as defined by the author. As Mr. Weisbrodt had said, there was need for further clarification of such terms as self-determination, which could readily become shibboleths, obstructive to thinking and analysis and disruptive of international harmony.

71. Mr. LEBLANC (Franciscans International), speaking also on behalf of Dominicans for Justice and Peace, said that Mrs. Iwas' important working paper (E/CN.4/Sub.2/1999/18) referred to the inequalities and injustices to indigenous peoples contained in legislation of the various States in which they lived and which had been exacerbated by neo-liberal economic policies that viewed those people and their lands in terms of money and profit. The paper rightly observed that the legacy of colonialism was probably most acute in the expropriation of indigenous lands, carried out with little concern for the long-term effects on the lives of indigenous peoples. A recent blatant example had occurred in the Chinelapas region of the State of Oaxaca in Mexico where, although the rights of the local Zoque people had been recognized by both the Spanish colonial authorities and the Mexican Federal authorities, Zoque land had been illegally incorporated into the State of Chiapas in collusion with forestry and cattle farming interests.

72. In order to underpin their claims to justice, some indigenous organizations had requested that the term "indigenous peoples" be included in international law since such recognition, together with the concept of collective rights, would give a new dimension to the understanding of human rights. Others sought recognition of indigenous legal systems to dispense justice on the basis of their own traditions and customs. If the working paper was to take on its full value, States must pay serious attention to the recommendations it contained, and the Sub-Commission must take effective follow-up action to the issues raised at its current session.

73. Ms. PARKER (International Educational Development, Inc.) said that her organization had been particularly impressed by Mr. Alfonso Martínez's study on treaties, agreements and other constructive arrangements between States and indigenous populations (E/CN.4/Sub.2/1999/20), and strongly supported his conclusion that Hawaii should be re-entered on the United Nations list of non-self-governing territories and resubmitted to competent bodies in the field of decolonization (paras. 163 and 164).

74. Her organization was particularly concerned about the war against the indigenous people in Chiapas, Mexico, where, since the ending of military action by the Zapatista National Liberation Army (EZLN), government troops had effected a mass occupation of the area and, in collusion with paramilitary forces, had carried out some of the worst massacres of indigenous peoples that the century had seen, and had driven more than 20,000 of them from their homes.

75. Although Mexico was a signatory of ILO Convention No. 169, which recognized the right of indigenous communities to live according to their traditional ways, and had signed the San Andres accords of February 1996, also guaranteeing that right, it was currently launching a military assault upon autonomous municipalities as and when they were formed. One noteworthy example was the municipality of Ricardo Flores Magon, from which human rights workers had been expelled, after which a military encampment had been established in the community.

76. She called upon the Sub-Commission to condemn even more forthrightly than at its preceding session such violations of indigenous rights, which had recently been brought once again to international attention by the visit to Mexico of the Commission's Special Rapporteur on extrajudicial, summary or arbitrary executions.

The meeting rose at 1 p.m.